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FACEBOOK, INC. and MARK ZUCKERBERG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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| FACEBOOK, INC. and MARK ZUCKERBERG,<br><br>Plaintiffs,<br><br>v.<br><br>CONNECTU, INC. (formerly known as CONNECTU, LLC), CAMERON WINKLEVOSS, TYLER WINKLEVOSS, DIVYA NARENDRA, PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA,<br><br>Defendants. | Case No. 5:07-CV-01389-RS<br><br>**DECLARATION OF THERESA A. SUTTON RE JULY 19, 2007 SUPPLEMENTAL MEMORANDUM**<br><br>Hrg. Date: July 11, 2007<br>Time: 9:30 A.M.<br>Judge: Honorable Richard Seeborg |

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1. I, Theresa A. Sutton, declare as follows:

2. I am an associate with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel for Plaintiffs Facebook, Inc. and Mark Zuckerberg.

3. On July 19, 2007, Facebook submitted a supplemental memorandum citing nine cases in support of its Opposition to Defendants' Motion to Dismiss for Lack of Personal Jurisdiction. (Docket No. 118.) Two of these cases, *Verizon v. Ralsky*, 203 F. Supp. 2d 601, 617 (E.D. Va. 2002); and *Gordon v. Virtumundo*, 2006 U.S. Dist. LEXIS 34095 (W.D. Wash. 2006), also were submitted to the Court on Monday, July 9, 2007.

4. I regret any confusion or inconvenience Facebook's supplemental memorandum caused the Court or counsel. I misunderstood the Court's instructions at the July 11, 2007, hearing. I understood that the parties could submit additional authorities on the issue of whether or not Defendants were required to know that Plaintiffs were in the forum at the time of the alleged bad acts. I believed this to be true because initially the Court stated: "What I would be inclined to do is allow you to submit any other authorities to me." (Trans. at 11:17:09). I did not, nor did anyone on Facebook's legal team, have an opportunity to listen to the recording of the hearing prior to filing Facebook's supplemental memorandum on July 19. Indeed, we only received the CD on July 18.

5. Having today listened to the relevant portion of the hearing transcript, I realize that the Court limited the supplemental submission to a discussion of the authority submitted by Facebook on July 9. I was not aware of our misapprehension until today.

6. As the Court will see, Facebook's Supplemental Memorandum does not provide any analysis of the newly submitted cases, but instead cites to them and sets out the rules those cases stand for with respect to the issue raised at the hearing.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day of July 2007 at Menlo Park, California.

/s/ Theresa A. Sutton /s/

## CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on July 20, 2007.

Dated: July 20, 2007.

Respectfully submitted,

/s/ Theresa A. Sutton /s/

Theresa A. Sutton